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to the ends of justice and will be conducted in accordance with the other provisions of this subpart.

[43 FR 17802, Apr. 26, 1978]

§2.717 Commencement and termination of jurisdiction of presiding officer.

(a) Unless otherwise ordered by the Commission, the jurisdiction of the presiding officer designated to conduct a hearing over the proceeding, including motions and procedural matters, commences when the proceeding commences. If no presiding officer has been designated, the Chief Administrative Law Judge has such jurisdiction or, if he is unavailable, another administrative law judge has such jurisdiction. A proceeding is deemed to commence when a notice of hearing or a notice of proposed action pursuant to §2.105 is issued. When a notice of hearing provides that the presiding officer is to be an administrative law judge, the Chief Administrative Law Judge will designate by order the administrative law judge who is to preside. The presiding officer's jurisdiction in each proceeding will terminate upon the expiration of the period within which the Commission may direct that the record be certified to it for final decision, or when the Commission renders a final decision, or when the presiding officer shall have withdrawn himself from the case upon considering himself disqualified, whichever is earliest.

(b) The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, may issue an order and take any otherwise proper administrative action with respect to a licensee who is a party to a pending proceeding. Any order related to the subject matter of the pending proceeding may be modified by the presiding officer as appropriate for the purpose of the proceeding.

[28 FR 10153, Sept. 17, 1963; 31 FR 12776, Sept. 30, 1966, as amended at 37 FR 28711, Dec. 29, 1972]

§2.718 Power of presiding officer.

A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain

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order. He has all powers necessary to those ends, including the powers to:

(a) Administer oaths and affirmations.

(b) Issue subpoenas authorized by law.

(c) Rule on offers of proof, and receive evidence.

(d) Order depositions to be taken.

(e) Regulate the course of the hearing and the conduct of the participants.

(f) Dispose of procedural requests or similar matters.

(g) Examine witnesses.

(h) Hold conferences before or during the hearing for settlement, simplification of the issues, or any other proper purpose.

(i) Certify questions to the Commission for its determination, either in his discretion or on direction of the Commission.

(j) Reopen a proceeding for the reception of further evidence at any time prior to initial decision.

(k) Appoint special assistants from the Atomic Safety and Licensing Board Panel pursuant to §2.722;

(l) Issue initial decisions; and

(m) Take any other action consistent with the Act, this chapter, and sections 551-558 of title 5 of the United States Code.

[27 FR 377, Jan. 13, 1962, as amended at 45 FR 62028, Sept. 18, 1980]

§2.719 [Reserved]

§2.720 Subpoenas.

(a) On application by any party, the designated presiding officer or, if he is not available, the Chairman of the Atomic Safety and Licensing Board Panel, the Chief Administrative Law Judge, or other designated officer will issue subpoenas requiring the attendance and testimony of witnesses or the production of evidence. The officer to whom application is made may require a showing of general relevance of the testimony or evidence sought, and may withhold the subpoena if such a showing is not made, but he shall not attempt to determine the admissibility of evidence.

(b) Every subpoena will bear the name of the Commission, the name and office of the issuing officer and the title of the hearing, and will command

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the person to whom it is directed to attend and give testimony or produce specified documents or other things at a designated time and place. The subpoena will also advise of the quashing procedure provided in paragraph (f) of this section.

(c) Unless the service of a subpoena is acknowledged on its face by the witness or is served by an officer or employee of the Commission, it shall be served by a person who is not a party to the hearing and is not less than eighteen (18) years of age. Service of a subpoena shall be made by delivery of a copy of the subpoena to the person named in it and tendering him the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Commission, fees and mileage need not be tendered, and the subpoena may be served by registered mail.

(d) Witnesses summoned by subpoena shall be paid, by the party at whose instance they appear, the fees and mileage paid to witnesses in the district courts of the United States.

(e) The person serving the subpoena shall make proof of service by filing the subpoena and affidavit or acknowledgment of service with the officer before whom the witness is required to testify or produce evidence or with the Secretary. Failure to make proof of service shall not affect the validity of the service.

(f) On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the presiding officer or, if he is unavailable, the Commission may: (1) Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms.

(g) On application and for good cause shown, the Commission will seek judicial enforcement of a subpoena issued to a party and which has not been quashed.

(h)(1) The provisions of paragraphs (a) through (g) of this section are not applicable to the attendance and testimony of the Commissioners or NRC

personnel, or to the production of records or documents in the custody thereof.

(2)(i) In a proceeding in which the NRC is a party, the NRC staff will make available one or more witnesses designated by the Executive Director for Operations, for oral examination at the hearing or on deposition regarding any matter, not privileged, which is relevant to the issues in the proceeding. The attendance and testimony of the Commissioners and named NRC personnel at a hearing or on deposition may not be required by the presiding officer, by subpoena or otherwise: *Provided*, That the presiding officer may, upon a showing of exceptional circumstances, such as a case in which a particular named NRC employee has direct personal knowledge of a material fact not known to the witnesses made available by the Executive Director for Operations require the attendance and testimony of named NRC personnel.

(ii) In addition, a party may file with the presiding officer written interrogatories to be answered by NRC personnel with knowledge of the facts designated by the Executive Director for Operations. Upon a finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source, the presiding officer may require that the staff answer the interrogatories.

(iii) No deposition of a particular named NRC employee or answer to interrogatories by NRC personnel pursuant to paragraphs (h)(2) (i) and (ii) of this section shall be required before the matters in controversy in the proceeding have been identified by order of the Commission or the presiding officer, pursuant to § 2.751a, or after the beginning of the prehearing conference held pursuant to § 2.752 except upon leave of the presiding officer for good cause shown.

(iv) The provisions of § 2.740 (c) and (e) shall apply to interrogatories served pursuant to this paragraph.

(3) Records or documents in the custody of the Commissioners and NRC personnel are available for inspection

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and copying or photographing pursuant to §§ 2.744 and 2.790.

[27 FR 377, Jan. 13, 1962, as amended at 31 FR 16310, Dec. 21, 1966; 35 FR 19501, Dec. 23, 1970; 37 FR 15132, July 28, 1972; 40 FR 2973, Jan. 17, 1975]

§ 2.721 Atomic safety and licensing boards.

(a) The Commission or the Chairman of the Atomic Safety and Licensing Board Panel may from time to time establish one or more atomic safety and licensing boards, each comprised of three members, one of whom will be qualified in the conduct of administrative proceedings and two of whom shall have such technical or other qualifications as the Commission or the Chairman of the Atomic Safety and Licensing Board Panel deems appropriate to the issues to be decided, to preside in such proceedings for granting, suspending, revoking, or amending licenses or authorizations as the Commission may designate, and to perform such other adjudicatory functions as the Commission deems appropriate. The members of an atomic safety and licensing board shall be designated from the Atomic Safety and Licensing Board Panel established by the Commission.

(b) The Commission or the Chairman of the Atomic Safety and Licensing Board Panel may designate an alternate qualified in the conduct of administrative proceedings, or an alternate having technical or other qualifications, or both, for an atomic safety and licensing board established pursuant to paragraph (a) of this section. If a member of a board becomes unavailable, the Commission or the Chairman of the Atomic Safety and Licensing Board Panel may constitute the alternate qualified in the conduct of administrative proceedings, or the alternate having technical or other qualifications, as appropriate, as a member of the board by notifying the alternate who will, as of the date of such notification, serve as member of the board. In the event that an alternate is unavailable or no alternates have been designated, and a member of a board becomes unavailable, the Commission or the Chairman of the Atomic Safety and Licensing Board Panel may appoint a

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member of the Atomic Safety and Licensing Board Panel who is qualified in the conduct of administrative proceedings or a member having technical or other qualifications, as appropriate, as a member of the atomic safety and licensing board by notifying the appointee who will, as of the date of such notification, serve as a member of the Board.

(c) An atomic safety and licensing board shall have the duties and may exercise the powers of a presiding officer as granted by § 2.718 and otherwise in this part. At any time when such a board is in existence but is not actually in session, any powers which could be exercised by a presiding officer or by the Chief Administrative Law Judge may be exercised with respect to such a proceeding by the chairman of the board having jurisdiction over it. Two members of an atomic safety and licensing board constitute a quorum, if one of those members is the member qualified in the conduct of administrative proceedings.

[31 FR 12776, Sept. 30, 1966, as amended at 33 FR 8588, June 12, 1968; 34 FR 13361, Aug. 19, 1969; 35 FR 11459, July 17, 1970; 35 FR 19658, Dec. 29, 1970; 37 FR 15132, July 28, 1972; 37 FR 28711, Dec. 29, 1972; 40 FR 51996, Nov. 7, 1975; 48 FR 52285, Nov. 17, 1983; 56 FR 29408, June 27, 1991]

§ 2.722 Special assistants to the presiding officer.

(a) In consultation with the Panel Chairman, the presiding officer may, at his discretion, appoint from the Atomic Safety and Licensing Board Panel established by the Commission, personnel to assist the presiding officer in taking evidence and preparing a suitable record for review. Such appointment may occur at any appropriate time during the proceeding but shall, at the time of the appointment, be subject to the notice and disqualification provisions as described in § 2.704. Such special assistants may function as:

(1) Technical interrogators in their individual fields of expertise. Such interrogators shall be required to study the written testimony and sit with the presiding officer to hear the presentation and cross-examination by the parties of all witnesses on the issues of the interrogators' expertise, taking a